

Order 2003-10-6  
Served: October 6, 2003



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 6th day of October, 2003

Application of

**REPUBLIC AIRLINE, INC.  
d/b/a REPUBLIC AIRLINES**

**Docket OST-2003-14579**

for a certificate of public convenience and necessity under  
49 U.S.C. 41102 to engage in interstate scheduled air  
transportation of persons, property, and mail

**ORDER TO SHOW CAUSE  
PROPOSING ISSUANCE OF CERTIFICATE AUTHORITY**

**Summary**

By this order, we tentatively find that Republic Airline, Inc. d/b/a Republic Airlines and d/b/a US Airways Express<sup>1</sup> ("Republic") is fit, willing, and able to provide interstate scheduled air transportation of persons, property, and mail as a certificated air carrier, using small (60 seats or fewer) aircraft, subject to limitations and conditions.

**Background**

Section 41102 of Title 49 of the United States Transportation Code ("the Transportation Code") directs us to determine whether applicants for certificate authority to provide interstate scheduled air transportation are "fit, willing, and able" to perform such transportation, and to comply with the Transportation Code and the regulations of the Department. In making fitness findings, the Department uses a three-part test that reconciles the Airline Deregulation Act's liberal entry policy with Congress' concern for operational safety and consumer protection. The three areas of inquiry that must be addressed in order to determine a company's fitness are whether the applicant (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) will have access to resources sufficient to commence operations without posing

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<sup>1</sup> Republic has asked that we register the trade name "US Airways Express" for use in certain of its proposed operations. We have done so. While this trade name will not be reflected on any certificate that may ultimately be awarded to Republic, the company will be authorized to conduct operations under the "US Airways Express" trade name.

an undue risk to consumers, and (3) will comply with the Transportation Code and regulations imposed by Federal and State agencies. We must also find that the applicant is a U.S. citizen.

On February 24, 2003, Republic filed an application in Docket OST-2003-14579 for a certificate to engage in interstate scheduled air transportation of persons, property, and mail. Republic accompanied its application with the fitness information required by section 204.3 of our regulations.<sup>2</sup>

Answers to Republic's application were filed by Kenneth Moninski, the Airline Division-International Brotherhood of Teamsters (IBT), and the Regional Airport Authority of Louisville and Jefferson County (Louisville Airport Authority). The only answer that objected outright to the application was that of IBT.<sup>3</sup> The answer filed by the Louisville Airport Authority supported the application,<sup>4</sup> while that filed by Mr. Moninski asked the Department to carefully consider certain issues in conducting its review.<sup>5</sup> Although the IBT has filed an answer opposing Republic's application,<sup>6</sup> we, nonetheless, propose to decide the issue of the applicant's fitness on the basis of the written record. Moreover, after review of these filings, together with the fitness information submitted by Republic, we tentatively conclude that the applicant is a U.S. citizen and is fit, willing, and able to conduct the operations proposed utilizing small aircraft. However, we will give interested persons an opportunity to show cause why we should not adopt as final the tentative findings and conclusions stated herein.

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<sup>2</sup> On May 27, Republic filed information supplementing its application. On June 11, the applicant filed in the public portion of Docket OST-2003-14579 the information it had previously filed under seal for which confidential treatment was denied. On June 25, the applicant submitted a copy of its Preapplication Statement of Intent (filed on May 23 with the FAA) for the record in this case. On July 31, Republic submitted a revised timeline for its planned operations and resume and compliance information for its new Director of Safety.

<sup>3</sup> In addition to IBT's formal answer, Mr. James P. Hoffa, the General President of the International Brotherhood of Teamsters, AFL-CIO, filed a letter opposing the application.

<sup>4</sup> In addition to the formal answer filed by the Louisville Airport Authority, Representatives Anne Northup and Ron Lewis and Senator Jim Bunning filed letters in support of the application.

<sup>5</sup> Specifically, Mr. Moninski asked that the Department seek clarification on (1) the reasons Republic's parent has elected to create a new entity for the operations proposed, rather than relying on its existing subsidiary, Chautauqua Airlines; (2) the financial fitness standards that apply to new applicants; and (3) the need for confidential treatment of various documents submitted in support of Republic's application. We have addressed each of these areas either through action already taken (*see* letters dated May 9 and June 17, 2003, to Republic ruling on its request for confidential treatment) or within the text of this order.

<sup>6</sup> IBT is the collective bargaining representative of the pilots employed by Chautauqua Airlines, a sister company to the applicant. While this answer was filed more than 21 days after the date of Republic's initial application, it was filed less than 21 days after the Department granted IBT access to the confidential material submitted in support of the application. Therefore, we will accept its filing as timely filed.

## FITNESS

### The Company

Republic was organized as a corporation under the laws of the State of Delaware in November 1999, and is a wholly owned subsidiary of Republic Airways Holding, Inc. (RAH), a holding company that also owns Chautauqua Airlines, a commuter air carrier.<sup>7</sup>

Republic now seeks certificate authority in order to provide regional jet service on behalf of US Airways as a US Airways Express carrier. Similar operations on behalf of US Airways are performed by the applicant's sister company (Chautauqua) as well as by other air carriers. Republic notes, however, that its proposed operations will be conducted entirely separately from the Chautauqua operations, with a different base of operations (Louisville) and a different team of key management personnel.

### Financial Plan and Operating Proposal

If granted the certificate authority it seeks, Republic proposes to provide scheduled air transportation from its base in Louisville using up to 23 50-seat Embraer EMB-145 aircraft on behalf of US Airways under a Regional Jet Service Agreement ("RJS agreement" or "the agreement").<sup>8</sup> Republic has not provided a detailed service proposal for its scheduled operations based on specific markets. It notes that this is because US Airways has not, as yet, determined the exact routes to be operated by Republic under the agreement. Nonetheless, it states that it expects to be operating services to feed US Airways' mainline operations and that its first two aircraft will operate between Louisville and Ronald Reagan Washington National Airport (DCA) and LaGuardia (LGA). Further, Republic has stated that it intends to pursue opportunities to utilize its aircraft, independent of the RJS agreement, for occasional charter service.

While it has provided the operating forecasts we require to evaluate fitness and stated that it has the financial capability to implement its proposed operations, Republic argues that the Department should not apply its standard financial fitness criteria in determining its fitness.<sup>9</sup> Republic believes that this criteria is not relevant to its proposed operations given its agreement with US Airways under which US Airways will compensate Republic, in advance, for its

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<sup>7</sup> Chautauqua has a 30-year history of providing commuter air service. The company currently operates a fleet of 62 Embraer regional jet aircraft, providing services under the trade names of American Connection, America West Express, Delta Connection, and US Airways Express. A more complete description of Republic's ownership is contained in the **CITIZENSHIP** section of this order.

<sup>8</sup> The applicant has stated that, while its agreement with US Airways calls for it to operate up to 23 Embraer aircraft, at most only 20 of these aircraft will be placed in service by the end of its first year of operations.

<sup>9</sup> In evaluating an applicant's financial fitness, the Department generally asks that the company have available to it sufficient resources to cover all pre-operating costs plus a working capital reserve equal to the operating costs that would be incurred in three months of "normal" certificated operations. Also, in calculating available resources, projected revenues generally may not be used.

services without regard to the number of passengers carried and will assume all responsibility for passenger-related reservations, ticketing, revenue collection, and re-accommodation/refund functions.

In its answer to Republic's application, IBT states that it believes that the applicant has failed to demonstrate that it will possess adequate financial resources to maintain operations under the requested certificate. Further, IBT argues that Republic has not demonstrated that it possesses adequate financing to obtain its aircraft under the delivery schedule submitted with its application. IBT also argues that the Department should not rely on Republic's agreement with US Airways in determining financial viability, noting that US Airways has only recently emerged from bankruptcy. Further, because Louisville is not now a hub for either US Airways or any of its Express carriers, IBT argues that US Airways is not in a position to assure continuation of service to Louisville should Republic fail to obtain financing.<sup>10</sup>

In response to IBT's answer, Republic argues that it has, in fact, established its financial viability and, under applicable Department policy and precedent, Republic satisfies the required fitness standards. In support of this argument, Republic notes that it has supplied information showing how it expects to fund both its scheduled services as a US Airways Express carrier, as well as its proposed *ad hoc* charters. Republic further states that Department precedent with respect to fitness based on cost-plus service agreements with major U.S. carriers is applicable to its request for scheduled certificate authority and notes that US Airways, not Republic, will have the direct financial relationship with consumers for the scheduled passenger operations at issue. Further, the applicant argues that IBT has erroneously suggested that, because US Airways has recently emerged from Chapter 11 protection, "US Airways cannot serve as adequate assurance of consumer monies paid for travel on Republic." The applicant states that, because all money paid for scheduled travel on it will, in fact, be paid to US Airways, the Department could no more make a finding that Republic passenger funds were not adequately protected than it could for US Airways' own services.

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<sup>10</sup> IBT also argues that Republic's application is not in the public interest and, therefore, should be denied. This argument is independent of IBT's position on the applicant's financial fitness. Specifically, IBT argues that, because the operations proposed by Republic are duplicative of the operations conducted by Chautauqua, the application at issue is inappropriate and unnecessary and represents an attempt by RAH to undermine prevailing rates of employee pay, rules, and working conditions at Chautauqua. IBT further argues that, since Chautauqua could undertake the operations proposed, the public would not be served by expanding regional air operations with an untested and substantially nonexistent operation. In its reply, Republic states that its operations will not be duplicative of Chautauqua's because it has developed its own arrangement with US Airways under entirely different terms. Further, the applicant argues that IBT's position is inconsistent with the mandate of Congress in the Airline Deregulation Act that encourages new entry and provides that additional domestic airline services are presumptively in the public interest. We agree with the applicant. The Department does not make a separate finding of public interest in cases involving new interstate certificate authority. Rather, the decisional criteria in determining whether such an application is in the public interest are whether the applicant is a U.S. citizen and is fit to hold the certificate authority at issue. As set forth in this order, we tentatively find that Republic meets these criteria and, therefore, grant of certificate authority to it is in the public interest.

In support of its ability to undertake its proposed operations, Republic has provided a forecast for its proposed scheduled service based on the number of block hours it anticipates operating during its first year, and provided a separate forecast for its proposed charter operations, which it estimates will involve 250 flight hours during its first year of operations. In addition, Republic has supplied financial statements for its parent, RAH, and information on its initial funding.<sup>11</sup>

While much of the information supplied in support of Republic's fitness was provided confidentially, IBT was provided with the opportunity to review this data. Having done so, it has not argued that the expenses forecast by the applicant for providing either the scheduled or charter services at issue are not reasonable or do not include major components such as aircraft lease expenses.

Further, while IBT argues that Republic has not demonstrated that it has the ability to obtain the financing needed to acquire its aircraft under the delivery schedule submitted in its application, this argument appears to be based solely on a statement made by the applicant that it would seek to obtain its aircraft on the secondary market. IBT infers from this statement that Republic was unable to obtain financing to purchase aircraft directly from either Embraer or Bombardier.<sup>12</sup>

The Department does not base a company's financial fitness on whether it obtains its aircraft new from a manufacturer or used on the secondary aircraft market. Rather, we look to see that the applicant has included in its forecasts the costs associated with obtaining and operating the number of aircraft proposed and, if so, whether it will have available adequate funding to commence these operations without posing an undue risk to consumers or their funds.

Our review of Republic's pre-operating and first-year operating expense forecasts, both for the US Airways Express operations and for the independent charter operations proposed, finds that they appear to be reasonable. Further, it appears that Republic has available sufficient funds to meet our financial fitness criteria for the type of operations proposed. IBT has apparently misunderstood our financial fitness standard as it applies to companies that provide regional feeder services to a well-established major airline such as US Airways. As we have previously noted, in cases such as these, the Department's working capital reserve requirement is not necessary.<sup>13</sup>

However, because it intends to hold out limited charter operations to the public outside of its RJS agreement with US Airways, Republic has provided additional information to establish its fitness

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<sup>11</sup> Financial statements for RAH, covering the last three calendar years, show that RAH has been profitable and its balance sheets show that, while it has had a negative working capital position in each period, its total assets have exceeded its total liabilities resulting in positive stock equity against which the company could borrow if needed.

<sup>12</sup> IBT appears to have overlooked Republic's statement on page 8 of its application that RAH has already negotiated aircraft acquisition agreements with Embraer and will assign these agreements to the applicant and assist it in arranging for third-party financing. This is in line with what RAH has, in the past, done with respect to Chautauqua. There is nothing on the record that would indicate that RAH will not be able to complete similar transactions for additional aircraft in the future.

<sup>13</sup> See, for example, Order 2000-1-25, Atlantic Coast Jet, Inc., and Order 2000-11-22, Potomac Air, Inc.

to do so. Specifically, Republic has stated that it expects to operate approximately 250 block hours in charter services during its first year of operations and that it will average expenses of \$3,000 per block hour in doing so. Thus, it expects to incur \$750,000 in expenses for its first year of charter operations, meaning that it would need \$187,500 in working capital to meet our financial fitness requirement. As shown on its projected balance sheet, Republic will have a cash balance of \$500,000 provided by RAH to meet this requirement.<sup>14</sup>

In light of the foregoing, we tentatively conclude that Republic will have sufficient financial resources available to it to enable it to commence its proposed operations without posing an undue risk to consumers or their funds.

### **Managerial Competence**

While Republic will have some commonality in its senior management with that of its parent, RAH, and its sister company, Chautauqua,<sup>15</sup> it will have a separate, independent senior management (President and Chief Operating Officer) and key technical personnel team.

Mr. Thomas M. Hanley has served as Republic's President and Chief Operating Officer since November 2002. He has over 24 years experience in the airline industry, most recently with Chautauqua, which he joined in September 2002 as Vice President of Special Projects. Prior to this, Mr. Hanley was Vice President of US Airways' Express division from 1999-2002<sup>16</sup> and served with United Airlines in various positions including Manager of Revenue Management, Manager of Domestic Pricing, Director of Interline, and Director of the United Express division from 1978-1999.

Mr. Alex Osleger recently joined Republic as its Director of Operations after having held the same position for four years with Chautauqua. Prior to becoming Chautauqua's Director of Operations, Mr. Osleger, an Airline Transport Pilot, held positions with Chautauqua as Chief Pilot (1995-1998), Saab 340 Program Manager (1994 to 1995), and pilot (1987-1994).<sup>17</sup>

Serving as Republic's Director of Quality Assurance and Chief Inspector is Mr. Greig Dean, an Airframe and Powerplant mechanic. After 14 years as a military aircraft maintenance technician, Mr. Dean joined Alaska Airlines as a mechanic in 1989. In 1990, he left Alaska Airlines and

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<sup>14</sup> In addition to this cash infusion, Republic projects other current assets (in the form of inventory) of \$400,000, giving it a working capital balance of \$900,000. Republic has stated that it will maintain a monthly cash balance of at least \$500,000 during its first year of operations. Republic's parent, RAH, has assets (excluding those of Chautauqua) in excess of \$35.0 million to support Republic's operations.

<sup>15</sup> Republic's Chairman of the Board and Chief Executive Officer (Mr. Bryan K. Bedford) and its Board members (Mr. Joseph M. Jacobs and Mr. Jay L. Maymudes) are also officers and board members for RAH and Chautauqua. In addition, Mr. Arthur H. Amron and Mr. Maymudes also serve as officers of both Chautauqua and Republic, as well as for Shuttle America, a related air carrier; Mr. Amron as Vice President and Assistant Secretary and Mr. Maymudes as Vice President, Secretary and Treasurer.

<sup>16</sup> In addition, from August 1999 until April 2002, Mr. Hanley served as a Director of Allegheny Airlines, Piedmont Airlines, and PSA.

<sup>17</sup> In addition, from 1984-1987, Mr. Osleger worked as a flight instructor in Lafayette, Indiana.

joined United Parcel Service (UPS) as a Component Reliability and Cost Management Supervisor, a position he held until 1995 when he left UPS to start an aircraft component repair station (Star Aviation) in Louisville.<sup>18</sup>

Mr. Mark Musial, Republic's Director of Maintenance, is an Airframe & Powerplant mechanic with over 20 years of large aircraft maintenance experience. Mr. Musial began his aviation maintenance career in 1981 with People Express where he worked until joining Continental as a supervisor for B747 "C" Checks in 1986. After a brief stint with Continental, Mr. Musial joined UPS in 1988. Over the next 14 years, he held various senior maintenance positions with UPS, including Supervisor-Quality Control Inspection, Supervisor-Aircraft Maintenance Finance Audit, Manager-Aircraft Records, and Manager-B747 Major Maintenance.

Mr. Rick Morgenstern, an Airline Transport Pilot with over 11,000 total flight hours, joined Republic as its Chief Pilot after serving for approximately 18 months as a pilot with NetJets. Prior to his work with NetJets, Mr. Morgenstern held civilian pilot positions with Emery Worldwide Airlines (1989-2001), Orion Air (1981-1989), and Braniff (1978-1981), and military pilot positions with the Michigan Air National Guard (1978-1979) and the United States Air Force (1973-1977).

Republic's Director of Safety, Mr. Donald Olvey, was most recently Vice President of Safety for RAH (2003), having served in a similar position with Chautauqua for three years (2000-2003). Previously, Mr. Olvey spent three years as a Senior Systems Development Engineer with the MITRE Corporation, two years as a consultant with National Aviation Consultants, and 31 years in various operational and management positions with Delta. While at Delta, Mr. Olvey progressed from his entry position as a ramp serviceman through increasingly responsible positions ending as System Manager, Flight Control-North American Operations.

In view of the experience and background of the applicant's key personnel, we tentatively conclude that Republic has assembled a management team that possesses the managerial skills and technical ability to conduct its proposed service.<sup>19 20</sup>

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<sup>18</sup> Mr. Dean currently holds 30 percent of the voting stock of Star Aviation. Upon joining the applicant, Mr. Dean resigned as Star Aviation's Vice-President.

<sup>19</sup> Both IBT and Mr. Moninski raised questions about the adequacy of the applicant's management team. These concerns were based on the information submitted in Republic's initial application. At that time, Republic had not yet identified all members of its management team. Since this time, Republic has completed its selection of its management and key technical personnel team.

<sup>20</sup> Before authorizing a carrier to conduct air transportation operations, the FAA also evaluates certain of the applicant's key personnel with respect to the minimum qualifications for those positions as prescribed in the Federal Aviation Regulations. The FAA's evaluation of these key personnel provides an added practical and in-person test of the skills and technical ability of these individuals. The FAA has advised us that some of the individuals identified as key personnel will require deviations from Part 119 of its rules in order to hold their positions. Should the FAA ultimately decide that any member of the key technical team presented to us is not, for whatever reason, satisfactory to it, Republic would need to undertake the changes required by the FAA and report such changes to us prior to having its certificate made effective.

## Compliance Disposition

We also tentatively conclude that Republic has the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel conform to applicable safety standards and that acceptable consumer relations practices will be followed.

The applicant states that, except as noted in the application, there are no actions or outstanding judgments against it, its owners, or its key personnel, nor have there been any charges of unfair, deceptive or anti-competitive business practices, or of fraud, felony or antitrust violations brought against any of these parties in the past ten years.<sup>21</sup> Republic also states that there are no pending investigations, enforcement actions, or formal complaints filed by the Department against it, its key personnel, or persons having a substantial interest in it with respect to compliance with the Transportation Code or the Department's regulations.

Further, our search of the Department's records found no problems with Republic or its key personnel, and we have previously found the compliance disposition of its owners satisfactory in conjunction with the fitness of Chautauqua. In addition, the FAA has advised us that Republic has applied for certification under Part 121 of the Federal Aviation Regulations and that it knows of no reason why we should act unfavorably on the company's application.

## CITIZENSHIP

Section 41102 of the Transportation Code requires that certificates to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section requires that the president and two-thirds of the Board of Directors and other managing officers be U.S. citizens and that at least 75 percent of the outstanding voting stock be owned by U.S. citizens. We have also interpreted the Transportation Code to mean that, as a factual matter, the carrier must actually be controlled by U.S. citizens.

Republic is wholly owned by RAH, which, itself, is wholly owned by WexAir, LLC. The sole authorized manager of WexAir is Wexford Capital, LLC (Capital), a Connecticut based limited liability company with the exclusive right and authority to act for WexAir. The ownership of WexAir is split between four companies: Imprimis Investors (85.27 percent), Wexford Spectrum Fund I (6.0 percent), Wexford Offshore Spectrum Fund (5.29 percent), and Wexford Partners Investment Co. (3.43 percent). The owners of Imprimis are Wexford Special Situations 1997, LP (Situations) and Wexford Special Situations 1997 Institutional, LP (SI) that own 78.17 percent and 21.83 percent, respectively, of Imprimis. Situations, in turn, is owned by Wexford 97 Advisors (Advisors) and 94 limited partners, while SI is owned by Advisors and seven limited

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<sup>21</sup> Republic notes, however, that there are various pending actions against Chautauqua that have arisen in the course of its airline operations and which are typical of the litigation commenced against air carriers. In addition, Mr. Jacobs, one of Republic's directors, has noted the existence of several legal actions in which either he or a company in which he has a substantial interest is named. Nothing in the information provided, however, indicates that these actions are outside the ordinary scope of business.



partners.<sup>22</sup> Advisors is the General Partner for both Situations and SI.<sup>23</sup> The only individuals who hold a ten percent or greater interest in either Advisors (the General Partner for the owners of Imprimis) or Capital (the sole manager of Republic's ultimate owner, WexAir) are Mr. Charles Davidson and Mr. Joseph Jacobs, both U.S. citizens.<sup>24</sup> We have previously found Chautauqua to be a U.S. citizen under this same ownership and control.<sup>25</sup> Further, all of Republic's key personnel are U.S. citizens and the company has provided an affidavit attesting that it is a citizen of the United States within the meaning of the Transportation Code and that it is actually controlled by U.S. citizens. Finally, our review of Republic's citizenship has uncovered no reason to suggest that control of Republic rests with non-U.S. citizens.

Based on the above, we tentatively conclude that Republic is a citizen of the United States and is fit, willing, and able to conduct the interstate scheduled passenger operations proposed, subject to conditions.

### OBJECTIONS

We will give interested persons 14 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 7 days thereafter. We expect such persons to direct their objections, if any, to the application and points at issue and to support such objections with detailed economic analyses. If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such a hearing or discovery is considered necessary, and what material issues of decisional fact the objector would expect to establish through a hearing or discovery that cannot be established in written pleadings. The objector should consider whether discovery procedures alone would be sufficient to resolve material issues of decisional fact. If so, the type of procedure should be specified (*See* Part 302, Rules 19 and 20); if not, the reasons why not should be explained. We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to Republic's fitness and certification.

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<sup>22</sup> All of the partners in Situations and SI are U.S. citizens.

<sup>23</sup> Advisors holds a 20.8 percent interest in both Situations and SI, while the limited partners hold the remaining 79.2 percent interest of each company. No one limited partner in either Situations or SI holds a ten percent or greater interest in the applicant. Therefore, the identity of these individuals has been granted confidential treatment.

<sup>24</sup> Mr. Davidson holds a 67.96 percent interest in Advisors and a 58.89 percent interest in Capital. Mr. Jacobs holds a 26.21 percent interest in Advisors and a 22.71 percent interest in Capital.

<sup>25</sup> We have also found Shuttle America (a certificated air carrier) to be a U.S. citizen under similar, although not identical, ownership.

## CERTIFICATE CONDITIONS & LIMITATIONS

If Republic is found fit and issued the certificate it seeks, its authority will not become effective until the company has fulfilled all requirements for effectiveness as set forth in the terms and conditions attached to its certificate. Among other things, this includes our receipt of evidence that Republic has been certificated by the FAA to engage in the subject operations.

We note that our finding of fitness for Republic is based on the operating plans described in its application, namely the use of small aircraft and the performance of scheduled passenger operations only under a RJS agreement with a major U.S. airline. These findings might no longer apply if the company were to substantially change the scope of its operations through the introduction of independent scheduled passenger operations or large aircraft operations.<sup>26</sup> Therefore, we propose to limit any authority issued to the applicant to operations with aircraft having a maximum passenger capacity of not more than 60 seats or a maximum cargo capacity of not more than 18,000 pounds payload. Moreover, because the RJS agreement with US Airways and the support of RAH are critical to the applicant's viability, we intend to condition the effectiveness of the applicant's certificate authority on its continued existence as a wholly-owned subsidiary of RAH and on its operation of scheduled passenger operations under the provisions of its agreement with US Airways, or a similar agreement with another major U.S. air carrier. Should RAH seek to sell its interest in the applicant, or should Republic desire to conduct scheduled passenger operations independent of a fee-for-service agreement with a major U.S. air carrier, the applicant must file a request to amend the terms of its certificate.<sup>27</sup>

Furthermore, we remind the company of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once a carrier is found fit initially, it must remain fit in order to hold its authority. Thus, should Republic propose other substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our

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<sup>26</sup> Section 298.2(h) of our rules defines large aircraft as any aircraft designed to have a maximum capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.

<sup>27</sup> While the aircraft size limitation being imposed will apply regardless of the type of operations (scheduled or charter) conducted, we will not further limit Republic's ability to conduct charter passenger operations. Rather, Republic will be free to conduct charter operations independent of any fee-for-service arrangement provided that the aircraft utilized are small aircraft.

rules.<sup>28</sup> The compliance of the company with this requirement is essential if we are to carry out our responsibilities under the Transportation Code.<sup>29</sup>

Finally, to aid the Department in monitoring the fitness of new carriers, we ask all newly certificated carriers to submit a detailed progress report, within 45 days following the end of the first year of certificated operations, to the Air Carrier Fitness Division. The report should include a description of the carrier's current operations (number and type of aircraft, principal markets served, total number of full-time and part-time employees), a summary of how these operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements,<sup>30</sup> and a listing of current senior management and key technical personnel. The carrier should also be prepared to meet with staff members of the Fitness Division to discuss its current and future operations.

### **ACCORDINGLY,**

1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and award a certificate to Republic Airline, Inc. d/b/a Republic Airlines authorizing it to engage in interstate scheduled air transportation of persons, property, and mail, using small aircraft, subject to the attached specimen Terms, Conditions, and Limitations.
2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or the certificate award set forth here to file them with Department of Transportation Dockets, 400 Seventh Street, SW, Washington, D.C. 20590, in Docket OST-2003-14579, and serve them upon all persons listed in Attachment A no later than 14 days after the service date of this order; answers to objections shall be filed no later than 7 days thereafter.

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<sup>28</sup> The carrier may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations, ownership, or management, and to determine what additional information, if any, will be required under section 204.5. In addition, by notice dated July 21, 1998, the Department requested air carriers to provide a 30-day advance notification of any proposed change in ownership, restructuring, or recapitalization. If the carrier fails to file this updated information or if the information fails to demonstrate that the carrier will continue to be fit upon implementation of the substantial change, the Department may take such action as is appropriate, including enforcement action or steps to modify, suspend, or revoke the carrier's certificate authority.

<sup>29</sup> We also remind Republic about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) the certificate authority granted to a company shall be revoked if the company does not commence actual flying operations under that authority within one year of the date of the Department's determination of its fitness; (2) if the company commences operations for which it was found fit and subsequently ceases such operations, it may not resume certificated operations unless its fitness has been redetermined; and (3) if the company does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

<sup>30</sup> These financial statements should include a balance sheet as of the end of the company's first full year of actual flight operations and a twelve-month income statement ending that same date.

3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.<sup>31</sup>
4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter an order making final our tentative findings and conclusions.
5. We will serve a copy of this order on the persons listed in Attachment A.
6. We will publish a summary of this order in the Federal Register.

By:

**MICHAEL W. REYNOLDS**  
**Acting Assistant Secretary**  
**for Aviation and International Affairs**

*An electronic version of this document is available on the World Wide Web at:  
<http://dms.dot.gov>*

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<sup>31</sup> Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.



**SPECIMEN**  
*Terms, Conditions, and Limitations*

**REPUBLIC AIRLINE, INC.**  
**d/b/a REPUBLIC AIRLINES**

*is authorized to engage in interstate air transportation of persons, property, and mail between any point in any State, territory, or possession of the United States or the District of Columbia, and any other point in any of those entities.*

*This authority is subject to the following provisions:*

*(1) The authority to operate under this certificate will not become effective until six (business) days after the Department has received the following documents; provided, however, that the Department may stay the effectiveness of this authority at any time prior to that date:*

*(a) A copy of the holder's Air Carrier Certificate and Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).*

*(b) A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft.*

*(c) A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since the date of the Show Cause Order in this case.*

*(d) A revised list of pre-operating expenses already paid and those remaining to be paid, as well as independent verification that the holder has available to it funds sufficient to cover any remaining pre-operating expenses and to provide a working capital reserve equal to the operating costs that would be incurred in three months of operations.*

*(2) Pending receipt of effective authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card) or issue tickets for the large aircraft operations proposed under this certificate, and any advertisement or listing of such flights by the holder must prominently state: "This service is subject to receipt of government operating authority."*

*(3) When the authority contained in this certificate becomes effective, it shall remain so only so long as the holder remains a wholly owned subsidiary of Republic Airways Holding, Inc.*

- (4) When the authority contained in this certificate becomes effective, the scheduled passenger authority contained herein will be limited to operations performed under a fee-for-service agreement with US Airways, Inc., or a similar agreement with another major U.S. air carrier.
- (5) The holder may not operate aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.
- (6) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.
- (7) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA), and comply with all U.S. Government requirements concerning security.\*
- (8) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).
- (9) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.
- (10) The holder is authorized to conduct charter flights in interstate and/or foreign air transportation in accordance with the provisions of 14 CFR 212.
- (11) In the event that the holder receives effective scheduled passenger authority, the following additional conditions will apply:
- (a) The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.
  - (b) The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.

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\* To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served.

(12) *Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(l)), it must first comply with the requirements of 14 CFR 204.5.*

(13) *In the event that the holder does not commence actual flying operations under this certificate within one year of the date of the Department's determination of its fitness, its authority shall be revoked for dormancy, unless the holder is conducting operations under another type of certificate authority. Further, in the event that the holder commences operations for which it was found "fit, willing, and able" and subsequently ceases all such operations, its authority under all certificates held shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.*

## SERVICE LIST FOR REPUBLIC AIRLINES

Attachment A

MR ROBERT E COHN  
MS SHERYL ISRAEL  
SHAW PITTMAN  
2300 N STREET NW  
WASHINGTON DC 20037

MR PETER J LYNCH AGC-300  
FAA ASST CHIEF COUNSEL FOR  
ENFORCEMENT  
800 INDEPENDENCE AVE SW  
WASHINGTON DC 20591

MR KENNETH A MONINSKI  
1028 LAKEVIEW BLVD E #6  
SEATTLE WA 98102

MR THOMAS M HANLEY  
PRESIDENT & CEO  
REPUBLIC AIRLINE INC  
2500 S HIGH SCHOOL RD STE 92  
INDIANAPOLIS IN 46241

MR DON BRIGHT K-14  
OFFICE OF AIRLINE INFO  
DEPT OF TRANSPORTATION  
400 SEVENTH ST SW  
WASHINGTON DC 20590

MR JAMES P HOFFA  
GENERAL PRESIDENT  
INTL BRTHRHD OF TMSTERS AFL-C  
25 LOUISIANA AVE NW  
WASHINGTON DC 20001-2198

MGR FLIGHT STANDARDS DIV  
FAA SOUTHERN REGION  
WATERSON TOWERS  
1930 BISHOP LN 11<sup>TH</sup> FLOOR  
LOUISVILLE KY 40218

MR JAMES DELONG  
GENERAL MANAGER  
REGIONAL AIRPORT AUTHORITY  
LOUISVILLE & JEFFERSON CNTY  
PO BOX 9129  
LOUISVILLE KY 40209-0129

THE HONORABLE JIM BUNNING  
UNITED STATES SENATE  
WASHINGTON DC 20510

REGIONAL COUNSEL  
FAA AS0-7  
SOUTHERN REGION HDQ  
P O BOX 20636  
ATLANTA GA 30320

MR ERNEST E SOWELL  
GENERAL COUNSEL  
TEAMSTERS LOCAL 747  
1419 FM 1960 ROAD  
HOUSTON TX 77073

THE HONORABLE JERRY ABRAMSC  
MAYOR OF LOUISVILLE  
LOUISVILLE KY 40202

MR RICHARD DUTTON AFS-900  
ASST MGR CSET  
FEDERAL AVIATION ADMIN  
45005 AVIATION DR STE 203B  
DULLES VA 20166-7537

MR WILLIAM R WILDER  
BAPTISTE & WILDER  
1150 CONNECTICUT AVE NW  
SUITE 500  
WASHINGTON DC 20036

THE HONORABLE RON LEWIS  
U S HOUSE OF REPRESENTATIVES  
WASHINGTON DC 20515